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contract for the sale of land, the vendee sued for a rescission on the ground of fraud, and in the same action sued to recover the money paid and to establish and foreclose a lien on the land therefor. *Held*, that though the plaintiff is entitled to a rescission and the return of the money, the lien is lost by the rescission. *Davis v. Rosenzweig Realty Co.*, 192 N. Y. 128.

A vendee is generally allowed an equitable lien for money paid under an executory contract for the purchase of land. *Elterman v. Hyman*, 192 N. Y. 113; see 9 HARV. L. REV. 486. This lien is based, not on the contract, but, as in the case of a vendor's lien after conveyance, on the necessity of doing justice as between vendor and purchaser in the relation created by the contract. *Whitbread & Co., Ltd. v. Watt*, [1902] 1 Ch. 835. And since the lien affords to the vendee security for the purchase money paid before conveyance, the analogy to an equitable mortgagee's lien is very close. *Rose v. Watson*, 10 H. L. Cas. 672. The mere fact of rescission clearly does not destroy the equitable basis of this vendee's lien. Accordingly, the English and some American courts have definitely held that such a lien survives rescission. *Whitbread & Co., Ltd. v. Watt*, *supra*; *Galbraith v. Reeves*, 82 Tex. 357. Furthermore, as the very fact of suing to foreclose the lien would seem to constitute an election to rescind the contract, the many American courts which allow such suits after the vendor has failed to make a good title, apparently accept that doctrine. *Occidental Realty Co., v. Palmer*, 117 N. Y. App. Div. 505. The present case would therefore, both on principle and authority, seem unsound.

**WAGERING CONTRACTS — RECOVERY OF MONEY LENT FOR GAMBLING.** — The plaintiff lent money to the defendant's testator knowing that it might be used in gambling. The money was lent and so used in a jurisdiction where gambling was not illegal. *Held*, that the plaintiff may recover. *Saxby v. Fulton*, 24 T. L. R. 856 (Eng., K. B. D., July 27, 1908).

The English courts hold that the fact that money is lent for the express purpose of gambling will not defeat recovery if the contract is made and the money so used in a jurisdiction where gambling is not illegal. *Quarrier v. Colston*, 1 Phil. 147. The weight of American authority follows this doctrine. *Ward v. Vosburgh*, 31 Fed. 12. Opposing jurisdictions maintain that comity does not require a state to enforce contracts conflicting with its own conception of public policy. *Pope v. Hanke*, 155 Ill. 617. Conceding the soundness of the minority doctrine, the present holding would still seem correct, for the case must be distinguished from one wherein the loan is for the express purpose of gambling in a state where that practice is illegal. Money so lent cannot be recovered. *McKinnell v. Robinson*, 3 M. & W. 434; *Tyler v. Carlisle*, 79 Me. 210. But where the money is placed at the absolute disposal of the borrower, as in the principal case, the mere knowledge of the lender of the other's intention to use it in illegal gaming does not so render him *particeps criminis* as to defeat recovery. *Jackson v. Bank of Goshen*, 125 Ind. 347.

## BOOKS AND PERIODICALS.

### I. LEADING LEGAL ARTICLES.

**EQUITABLE JURISDICTION OF NUISANCE.** — In most of the United States it has been held that upon a bill to abate a nuisance, when the plaintiff's right or the defendant's wrong is disputed and doubtful, a permanent injunction will not issue unless the plaintiff has first obtained a judgment at law.<sup>1</sup> Whether or

<sup>1</sup> See 5 Pomeroy Eq. Jur., §§ 519 *et seq.* In England, New York, and California the statutes regulating procedure are construed to have abolished the rule. *Roskell v. Whitworth*, L. R. 5 Ch. 459; *Corning v. Troy Factory*, 40 N. Y. 191; *Lux v. Haggin*, 69 Cal. 255, 284.